

ENTERED

April 04, 2025

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff-Respondent,	§	
	§	CRIM NO. 4:15-cr-0344-3
v.	§	CIV. NO. 4:23-cv-01769
	§	
FRANKIE LEE SANDERS,	§	
	§	
Defendant-Movant.	§	

ORDER ADOPTING RECOMMENDATION OF THE MAGISTRATE JUDGE

Pending are Defendant-Movant Frankie Lee Sanders's Motion to Vacate, Correct, or Modify his Sentence Under 28 U.S.C. § 2255, Docket No. 1¹; and Defendant-Movant's Request to Amend his Section 2255 Motion, Docket No. 4; to which Plaintiff-Respondent United States of America has filed its opposition, and Sanders has replied. The Court has received from the Magistrate Judge a Memorandum and Recommendation, recommending that both of Sanders's pending motions be denied.

Sanders's timely filed Objections to the Magistrate Judge's Memorandum and Recommendations (Civil Document No. 13). The Court, after having carefully considered Sanders's Objections, and having made a *de novo* determination of Sanders's motion to vacate,

¹ Duplicate filings of the documents are made in both the above referenced Criminal No. 4:15-cr-0344-3 and Civil No. 4:23-cv-1769. For simplicity, the citations here will be to the civil case file.

correct, or modify his sentence under 28 U.S.C. § 2255 and of his motion for leave to amend his § 2255 motion, is of the opinion that the findings and recommendations of the Magistrate Judge are correct and should be and hereby are accepted by the Court. It is therefore

ORDERED and ADJUDGED for the reasons set forth in the Memorandum and Recommendation of the United States Magistrate Judge entered on December 4, 2024, which is adopted in its entirety as the opinion of the Court, that Sanders's § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 1) is DENIED; that Sanders's Motion to Amend (Document No. 4) is DENIED; and this § 2255 proceeding is DISMISSED WITH PREJUDICE. It is further

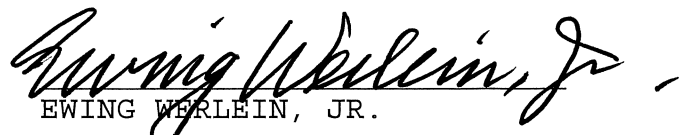
ORDERED that a certificate of appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment

of the constitutional claims debatable or wrong." Id. at 1604; Beazley v. Johnson, 242 F.3d 248, 263 (5th Cir.), *cert. denied*, 122 S.Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S.Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 8998 (5th Cir. 2000).

For the reasons set forth in the Memorandum and Recommendation, which has been adopted as the opinion of the Court, the Court finds that reasonable jurists would not find debatable the substantive or procedural determinations made herein. Thus, a certificate of appealability is DENIED.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED at Houston, Texas, on this 4th day of April, 2025.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE